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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,809	07/24/2001	Stefano Coccia	34658/GM/1p	3939

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MODIANO & ASSOCIATI  
Via Meravigli, 16  
MILANO, 20123  
ITALY

EXAMINER

HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 07/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/910,809

Applicant(s)

COCCIA, STEFANO

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102/103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 11-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gibbens et al. (US 4,805,243).

Gibbens et al. provides a protective element for cycling shorts (1), comprising a double-stretch support with which at least one double-stretch padding associated (column 2, lines 13-19 and column 3, lines 9-17). The double-stretch padding is constituted by a first central element which arranges itself approximately at the tangent to an imaginary curved line of a crotch of a pair of shorts (22). A second element is formed at the front and a pair of third elements are formed at the rear, with first flat regions interposed at transverse ends of the first central element (6). The second element affects the front region of the crotch while the third elements (13 and 14) are mirror-symmetrical with respect to a central plane which is longitudinal to the double-stretch padding and are mutually divided by the presence of a second flat region which accordingly lies at the longitudinal central plane (figure 3). The first flat region and the dimensions of the first central element and the second element and the third element are such that they are formed at a folding region of the double-stretch padding that is

not affected at the first second and third elements by any deformation during use (figure 3).

It is inherent that the shorts of Gibbens et al. are made of a Lycra material with a double-stretch support, since it is well known in the arts to make biker shorts out of a Lycra material which has properties of double-stretch support and as support in Applicant's specification on page 4. Also, there is nothing preventing the shorts from being produced by any method as desired.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart et al (US 5,551,082).

Stewart et al. provides a protective element for cycling shorts (column 2, lines 41-46), comprising a double-stretch support with which at least one double-stretch padding that can elongate along multiple planes, including mutually perpendicular ones and having a elasticity of up to 30-40% (column 2, lines 54-61). The support is associatable with a pair of shorts (12), the double-stretch padding is open-cell, high density padding and is deformable to multiple directions, including mutually perpendicular directions (column 4, lines 64-67). The shorts and the support can be made out of the same

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material (column 2, lines 54-61 and column 4, lines 64-67). However, Stewart et al. fails to teach the padding located at a point at which the user contacts the saddle of a bicycle, the double stretch padding having a density of between 55 and 95 kg/m<sup>3</sup> and a thickness of 5 to 12 mm and the method of making by thermo formation or a ultrasound application.

It would have been obvious to have provided the method of making the garment by any means as desired by the manufacturer. It would have been further obvious to have provided the pads at any location on the garment including the location where the saddle of a bicycle rests.

It would have been an obvious design choice to have provided the density and thickness of the padding material based upon the desired end use of the garment and size of the user, since one having ordinary skill in the art could determine the thickness and density of the padding needed to protect the user.

### ***Response to Arguments***

5. Applicant's arguments filed 05/20/02 have been fully considered but they are not persuasive. Applicant argues that the references used against the application do not support the method of thermo formation or ultrasound application and location of the pad at points where resting on a saddle of a bike occurs. Examiner disagrees since the garment can be produced by any method as desired and the pads can be positioned at any point on the garment as desired for end use. There is nothing that prevents the garments of Stewart et al. and Gibbens et al. from being produced by thermo formation or ultrasound application and containing pads where the saddle of a bicycle rests.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0758 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700